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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/998,575      | 11/16/2001  | Johann Eibl          | A34720-PCT-USA-A    | 7871             |

7590 09/29/2003

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NEW YORK, NY 10112

EXAMINER

WEBER, JON P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1651

DATE MAILED: 09/29/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/998,575

Applicant(s)

EIBL, JOHANN

Examiner

Jon P Weber, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-130 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-130 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☒ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other:

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### *Status of the Claims*

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 114-128 (second instance of 114 and 115) have been renumbered 116-130. Accordingly, claims 1-130 are presented for examination.

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Austria on 19 May 2000. It is noted, however, that applicant has not filed a certified copy of the Austrian PCT application as required by 35 U.S.C. 119(b).

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d) (Austrian application A89599, filed 19 May 1999), which papers have been placed of record in the file.

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-104, drawn to a topical medicament for stopping bleeding, classified in class 424, subclass 94.64 and 94.5 and class 514, subclass 2, for example.
- II. Claims 105-106 drawn to a method of making fibrinogen solution, classified in class 530, subclass 382, for example.

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- III. Claim 107-108, drawn to a fibrinogen solution with specific purity properties, classified in class 530, subclass 382, for example.
- IV. Claim 109, drawn to a process of obtaining a pathogen-free active substance, classified in class 435, subclass 173.7, for example.
- V. Claim 110, drawn to a method of binding an active agent to a biological matrix, classified in class 435, subclass 13, for example.
- VI. Claims 111-112, 114-115, drawn to a first process of making a fibrin gel with specific hydration with a drying agent, classified in class 530, subclass 381.
- VII. Claim 113, 116, drawn to a second process of making a fibrin gel with specific hydration with pressure, classified in class 530, subclass 381, for example.
- VIII. Claim 117-118, drawn to a third process of making a fibrin gel with metallic ions, classified in class 530, subclass 381, for example.
- IX. Claims 119-120, drawn to a lyophilized fibrin gel with plasticizer, classified in class 530, subclass 381, for example.
- X. Claim 121, drawn to a method of making a viscous fibrin gel, classified in class 530, subclass 381, for example.
- XI. Claim 122, drawn to a method of determining adherence to a fibrin clot, classified in class 435, subclass 40.52, for example.
- XII. Claims 124-130, drawn to a method of treating wounds with a medicament, classified in class 424, subclass 94.64 and 94.5 and class 514, subclass 2, for example.

The inventions are distinct, each from the other because of the following reasons:

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Inventions I and XII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product appears to have use as a glue.

Inventions I and II, IV-VII, and IX-XI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions Group I is a composition whereas Groups II, IV-VII, and IX-XI are drawn to various methods, each method requiring its own specific steps and obtaining different results.

Inventions I, III and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions each of these corresponds to distinctly different compositions, a medicament, a solution and a lyophilized gel respectively.

Because these inventions are distinct for the reasons given above and the search required for each Group is not required for other Groups especially in the non-patent literature, and/or the Groups have acquired a separate status in the art because of their recognized divergent subject matter, and/or the Groups have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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***Species Election***

Claims 1-104 are generic to a plurality of disclosed patentably distinct species of active agent groups, and a plurality of species within each active agent groups comprising:

- 1) structural proteins – for species see claims 2-4
- 2) cell stimulating factors - for species see claims 5-8
- 3) enzymes and enzyme inhibitors – for species see claims 9-16
- 4) antiadherent, antioxidant and antimicrobials – for species see claims 17-32
- 5) blood coagulation zymogens – for species see claims 33-64
- 6) particulate cell elements - for species see claims 65-95

If Group I is elected applicant is required under 35 U.S.C. 121 to elect (A) a single disclosed species of active agent group 1-6, and (B) within each species of active agent group 1-6, to select of species of said active agent group, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete **must** include an election of the invention to be examined Group and Species (if relevant) even though the requirement be traversed (37 CFR 1.143).

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

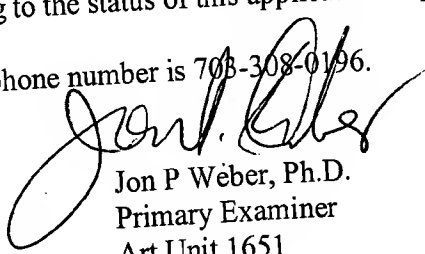
This is a restriction election only.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon P Weber, Ph.D. whose telephone number is 703-308-4015.

The examiner can normally be reached on daily, off 1st Fri, 9/5/4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 703-308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Jon P Weber, Ph.D.  
Primary Examiner  
Art Unit 1651

JPW